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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

WILLIAM H. TOBIN, FRANK J. CANONICO, III, LARS O. ERIKSSON, DANTE E. PICCONE, KENNETH R. RICKETTS, LOUIS TREFZ, LAWRENCE J. WILLINGER, GERALD A. WOOLF,

Petitioners,

vs.

GENERAL ELECTRIC COMPANY, JOHN F. WELCH, JR., GE PENSION TRUST,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether ERISA requires that decisions made by plan administrators who are in conflict of interest with plan beneficiaries be reviewed *de novo* by the courts.

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William H. Tobin, Frank H. Canonico, III, Lars O. Eriksson, Dante E. Piccone, Kenneth R. Ricketts, Louis Trefz, Lawrence J. Willinger, and Gerald A. Woolf respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a-4a) is unreported. The opinion of the District Court (App. 7a-24a) is unpublished. It is available at 1996 U.S. Dist. Lexis 14050.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on June 9, 1997 (App. 5a-6a). A timely Petition for Rehearing *En Banc* was denied by the Court of Appeals on July 7, 1997 (App. 25a-26a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioners are William H. Tobin, Frank H. Canonico, III, Lars O. Eriksson, Dante E. Piccone, Kenneth R. Ricketts, Louis Trefz, Lawrence J. Willinger, and Gerald A. Woolf, who filed this action in the United States District Court for the Eastern District of Pennsylvania to recover benefits under an Employee Welfare Benefit Plan and under an Employee Pension Benefit Plan maintained by their former employer, General Electric Company. The District Court had jurisdiction pursuant to 29 U.S.C. § 1132(e)(1).

Petitioners sought payment of the benefits pursuant to the Employee Retirement Income Security Act (hereinafter, ERISA), 29 U.S.C. § 1001, *et seq.* They also sought damages against

General Electric Company and its Chief Executive Officer, John F. Welch, Jr., for deliberately mischaracterizing the closing of their workplace to avoid paying them benefits due for a "plant closing," pursuant to 29 U.S.C. § 1140.[1] The District Judge granted Defendants' Motion for Summary Judgment, holding that Plaintiffs were not entitled to Plant Closing Benefits and that, therefore, there could be no claim for illegal action to prevent them from obtaining the benefits.

A. GE And The SPCO Business

Petitioners are eight former salaried, nonunion employees of Defendant General Electric Company (hereinafter, GE).[2] They became employed at GE's Static Power Components Operation (SPCO), which manufactured high powered silicon controlled semiconductors, at various times, from 1953 to 1972. The SPCO was located in Collingdale, Pennsylvania until 1985, when it was moved to Malvern, Pennsylvania.

GE is composed of twelve major businesses, as diverse as GE Capital, the National Broadcasting Company (NBC), and an aircraft engine business. The businesses are headquartered in different locations. SPCO was a part of one of those twelve businesses, GE Industrial and Power Systems. In 1985, a facility was constructed for SPCO adjacent to a building in Malvern that already housed Defendant GE's Power and Control (hereinafter, P&C) operation, in Malvern, and SPCO was moved

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1. "It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. . . ." 29 U.S.C. § 1140.

2. In the courts below, there was an additional plaintiff. Together, the nine original Plaintiffs were all the persons who were affected by GE's actions.

to its new location in Malvern. The P&C operation was part of a separate GE business from SPCO, GE's Electrical Distribution and Control business.

Before the move of SPCO to Malvern, GE regularly referred to the proposed new location as a "plant." While SPCO was at Malvern, GE's personnel department referred to the manager of SPCO as a "Plant Manager," and a GE personnel director referred to the "two plants" at Malvern in testimony in this case. As parts of separate GE businesses, SPCO and P&C reported through different channels to corporate headquarters. SPCO was treated by the P&C business much the same as the P&C business treated non-GE tenants at the same facilities. For example, SPCO had to pay for services it received from the P&C business, such as telephone and electrical service. In brief, SPCO and P&C made different products and were treated differently for corporate reporting and accounting purposes.

B. The ERISA Plans

In 1994, GE closed its SPCO operation. At the time, GE sponsored the GE Pension Plan (hereinafter, the Pension Plan) a pension plan that was an employee pension benefit plan as defined in ERISA, 29 U.S.C. § 1002(2)(A). GE also sponsored the GE Layoff Benefit Plan for Exempt Salaried Employees (hereinafter, Layoff Benefit Plan), an employee welfare benefit plan that was a welfare plan as defined in 29 U.S.C. § 1002(1). GE served as the "named fiduciary" for ERISA purposes for both Plans.

The Plans provided for enhanced Plant Closing Benefits for qualified employees who lost their jobs because of a "plant closing." In both the Pension Plan and the Layoff Benefit Plan of GE, "Plant Closing" is defined in the same language:

> The terms "plant closing" and "to close a plant" mean the announcement and carrying out of a plan to terminate and discontinue all Company operations at any plant, service shop or other facility.
>
> Such terms do not refer to the termination and discontinuance of only part of the Company's operations at any plant, service shop or other facility nor to the termination or discontinuance of all of its former operations coupled with the announced intention to commence there either larger or smaller other operations. Any Employees released by such latter changes will be considered as out for lack of work and will be subject to provisions applicable to those on layoff.
>
> Also, such terms do not refer to the transfer or sale of such operations to a successor employer who offers continued employment to Company employees. Company Employees who are not offered continued employment by the Company or by the successor employer will be considered as out for lack of work and will be subject to provisions applicable to those on layoff.

There is no definition of "plant," "service shop," or "facility" in GE's Plans. In 1992, GE had granted Plant Closing Benefits when it closed one of two separate business operations that had occupied physically connected facilities in Milwaukee, leaving a separate GE business functioning there.

Under the Layoff Benefit Plan, laid off employees were entitled to severance pay equal to one week's pay for each year of service. For those laid off because of a "Plant Closing," severance was to be calculated at two weeks' pay for each year of service for those employees, like the Petitioners, who had 15 or more years of service. The severance payments were an unfunded obligation, to be paid from GE's general assets, not its pension fund or any other special fund. Thus, GE had a direct interest in denying Plant Closing Layoff Benefits. The denial was a direct saving for GE of every dollar it would otherwise have paid.

Under the Pension Plan, employees displaced by a "Plant Closing" who had not yet reached the retirement age of 60, could obtain an unreduced early pension under the "Plant Closing Pension Option," if they had attained age 50 and had served in GE's employment for a minimum number of years, ranging from 10 to 35. Based on their ages and years of service, Petitioners Canonico, Ricketts and Trefz were eligible for early retirement if there was a "Plant Closing," and Petitioners Willinger and Woolf were to receive an unreduced pension if there was a "Plant Closing."

C. The Denials Of Benefits

GE's contract with unionized workers at SPCO provided for Plant Closing Benefits when company operations were affected by a closure that "result[s] in the termination of all employees represented by the Union at that location when those employees do not have displacement rights." When the SPCO closing was being planned, GE first decided that the closing would be called a "product line exit," not a "plant closing" as to unionized employees at the SPCO. "Product line exit" is not a term in GE's Plans. The concept does appear in the union contract, which refers to bumping rights if there is a

"discontinuance of a discrete, unreplaced product line." The union contract provided that the unionized SPCO employees had special, broadened bumping rights when their jobs were eliminated by discontinuance of a product line. Those rights became effective when the SPCO was closed, and therefore, under the union contract, there could be no "plant closing" because union members had displacement rights. The nonunion Petitioners had no such rights.

GE's decision, acting as an employer, that union members would not receive Plant Closing Benefits for the SPCO closing, controlled all of GE's decisions, acting as plan administrator, regarding Petitioners. GE did not want to grant Plant Closing Benefits for one group of employees, the nonunion Petitioners, while denying those benefits to another group, the unionized employees.

GE's Layoff Benefit Plan and Pension Plan gave discretion to the Plan Administrators (that is, to GE itself as to the Layoff Benefit Plan and to GE itself and its Pension Board as to the Pension Plan) to interpret their terms. Petitioners sought Plant Closing Benefits under both Plans, but were denied. Thereafter, Petitioners' appeals to GE's Pension Board (under the Pension Plan; there was no appeal from the denial of Layoff Benefits) were denied. The Pension Board members wanted to avoid defining the SPCO closing as a "plant closing" for nonunion employees, when it had already been established that union employees would not receive Plant Closing Benefits.

The District Court granted Respondents' motion for summary judgment. It utilized a deferential standard of review, and found GE's decision neither unreasonable nor arbitrary and capricious. App. 22a. It held that *Firestone Rubber & Tire Co. v. Bruch*, 489 U.S. 101 (1989) did not require a heightened review, even if GE was in a conflict of interest. App. 17a-18a.

The Court of Appeals for the Third Circuit affirmed on June 9, 1997, holding that there was "no error" in the District Court's determination, even as to what it referred to as "the alleged conflict of interest." App. 4a. On July 7, 1997, the Court of Appeals denied Petitioners' Petition for Rehearing *En Banc*. App. 25a-26a.

REASONS FOR GRANTING THE WRIT

In *Firestone Rubber & Tire Co. v. Bruch*, 489 U.S. 101 (1989), this Court held that principles of trust law govern review of ERISA plans, requiring *de novo* review of benefit decisions, regardless of whether the plan is funded or unfunded, and regardless of whether the plan administrator is acting under a conflict of interest. In dictum, the Court added that if a plan grants discretion to a plan administrator, review should be for abuse of discretion, and that if an administrator with discretion is operating under a conflict of interest, that conflict would be "a factor" in determining whether there was an abuse of discretion. *Id.*, 489 U.S. at 115.

There were several conflicts of interest affecting GE in this case. First, because the Layoff Benefit Plan provided for unfunded severance payments, GE saved money by denying Petitioners benefits. That saving was a direct saving of every dollar that GE would have had to pay in Plant Closing Layoff Benefits. Second, the denial of Plant Closing Benefits was to serve a purpose other than the interests of Petitioners. Once GE determined, with the apparent acquiescence of the union, that the union employees would not receive Plant Closing Benefits, the denial of benefits to Petitioners had to be important to GE's labor relations, to avoid unsettling the union by granting Petitioners benefits that union members did not receive. GE may well have bought good labor relations at the expense of Petitioners' rights as beneficiaries of the Plans. Third, the decision of the Pension Board, composed of GE executives, was

tainted by the fact that union employees did not receive Plant Closing Benefits. Pension Board members knew that the union employees did not receive Plant Closing Benefits, and they did not want to define the SPCO closing as a "Plant Closing" for nonunion employees but not for union employees. Fourth, Pension Board members knew that granting benefits to Petitioners would have increased the cost to GE. Fifth, the Pension Board discussion was led by one of its members who had originally approved the decision that the SPCO closing was not to be a "Plant Closing."

This case seeks a determination that judicial review of an administrator acting under a conflict of interest should be *de nova*. The issue is important for establishing a uniform standard for ERISA jurisprudence. The circuits are divided in their application of the *Firestone* dictum, and have devised vague and unworkable standards.

I.

THE DECISIONS OF THE COURTS OF APPEALS ARE IN CONFLICT AND THERE IS NO NATIONAL STANDARD FOR ERISA REVIEW.

The Court of Appeals in this case merely noted that "Following *Firestone*, the district court considered the defendants' alleged conflict of interest as a factor, but concluded that it did not fatally infect the defendants' interpretation of the plan. We find no error in this determination."[3] App. 4a. The District Court applied a deferential standard of review, holding

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3. The decision in the instant case was apparently contrary to dictum in an earlier case, in which the Third Circuit had suggested that a conflict of interest "counsels in favor of withholding deference." *See Kotrosits v. GATX Corp. Non-Contributory Pension*, 970 F.2d 1165, 1173 (3d Cir. 1992), *cert. denied*, 506 U.S. 1021 (1992).

GE's determinations to be neither unreasonable nor arbitrary and capricious. App. 22a.

The *Firestone* dictum has not proven to be sufficient guidance for the lower courts. There is a clear conflict in the circuits. The Second Circuit holds that if an administrator acts under a conflict and the beneficiary proves that the conflict influenced the decision, review is *de novo. Sullivan v. LTV Aerospace & Defense Co.*, 82 F.3d 1251 (2d Cir. 1996). In the Eleventh Circuit, if an administrator acts under a conflict of interest, the burden shifts to the administrator to demonstrate that its interpretation is not based on its self-interest. If the court's *de novo* review determines that the decision was wrong but reasonable, the decision is deemed an abuse of discretion unless the administrator can justify the decision as benefiting the class of participants and beneficiaries. *Brown v. Blue Cross & Blue Shield,* 898 F.2d 1556 (11th Cir. 1990), *cert. denied,* 498 U.S. 1040 (1991).[4] In the Ninth Circuit, a different but similar rule is applied: If the self-interest of the administrator caused a breach of his fiduciary duty to the beneficiary, review is *de novo* unless the administrator meets the burden of proving that the conflict did not affect his decision. *Atwood v. Newmont Gold Co.*, 45 F.3d 1317 (9th Cir. 1995). In the District of Columbia, a fiduciary who must pay benefits from his own funds is in a conflict, and so is entitled to no deference. *Wilson v. Group Hospitalization,* 791 F. Supp. 309 (D. D.C. 1992), *appeal dis'd,* 995 F.2d 306 (D.C. Cir. 1993).

In contrast, other circuits apply the abuse of discretion standard,[5] and find that a conflict results, in the Tenth Circuit,

4. The Secretary of Labor filed an *Amicus Curiae* Brief in the Court of Appeals in the instant case, urging adoption of the *Brown* standard.

5. The courts refer to "abuse of discretion" and "arbitrary and capricious" interchangeably.

in a "sliding scale" of deference, *Chambers v. Family Health Plan Corp.*, 100 F.3d 818 (10th Cir. 1996), or, in the Fourth Circuit, ". . . deference . . . lessened to the degree necessary to neutralize any untoward influence resulting from the conflict," *Doe v. Group Hospitalization & Medical Services*, 3 F.3d 80 (4th Cir. 1993). In the Fifth Circuit and the Third Circuit (in the instant case), a conflict of interest does not affect the standard of review but is a factor to be considered in determining whether there was an abuse of discretion. *See Bellaire General Hospital v. Blue Cross & Blue Shield*, 97 F.3d 822 (5th Cir. 1996). The Sixth Circuit reviews determinations of conflicted administrators according to a reasonableness standard. *See Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979 (6th Cir. 1991). The Seventh Circuit has held that there is no conflict of interest if benefits are to be paid from unfunded company assets, but that if there were a conflict, the court will give the abuse of discretion standard "more bite." *Chojnacki v. Georgia-Pacific Corp.*, 108 F.3d 810, 815 (7th Cir. 1997). In the Eighth Circuit, the standard of review in such cases is still open. *See Buttram v. Central States, Southeast & Southwest Areas Health & Welfare Fund*, 76 F.3d 896, 900 n.6 (8th Cir. 1996).

In the wake of *Firestone*, there is no single standard for reviewing the actions of ERISA administrators who, as fiduciaries under the statute, 29 U.S.C. § 1102(a), deny benefits while operating under conflicts of interest. Indeed, the Seventh Circuit departs from the weight of authority in suggesting that the obligation to pay unfunded benefits does not create a conflict, *see Chojnacki v. Georgia-Pacific Corp., supra*, while others, invoking traditional trust law principles, recognize that the obligation creates an inherent conflict. *See, e.g., Doe v. Group Hospitalization & Medical Services, supra; Salley v. E.I Du Pont de Nemours & Co.*, 966 F.2d 1011 (5th Cir. 1992); *Brown v. Blue Cross & Blue Shield, supra.* In the instant case, the Circuit Court referred to the "alleged conflict of interest," without acknowledging any of the conflicts that GE operated under. App. 4a.

It is essential that this Court articulate a single standard that effectuates the principles of trust law, and that can be applied with certainty and objectivity. The current mix of standards, with varying burden shifts and sliding scales of deference, from "lessened deference" to deference with "more bite," is a hodgepodge that lacks consistency, real meaning, and any guidance for lower courts, plan beneficiaries and administrators. A straightforward requirement of *de novo* review is required.

II.

THE DECISION OF THE COURT OF APPEALS WAS ERRONEOUS.

Well-established principles of trust law require a *de novo* review in cases where an ERISA plan administrator acts in a conflict of interest. An ERISA fiduciary must discharge his duties ". . . for the *exclusive* purpose of: (i) providing benefits to participants and their beneficiaries; . . ." 29 U.S.C. § 1104(1)(A) (emphasis added). That section is a clear statement of trust law as summarized in the leading authorities.

> The most fundamental duty owed by the trustee to the beneficiaries of the trust is the duty of loyalty. This duty is imposed on the trustee not because of any provision in the terms of the trust but because of the relationship that arises from the creation of the trust. . . . He is not permitted to place himself in a position where it would be for his own benefit to violate his duty to the beneficiaries.

2A Scott & Fratcher, Trusts, § 170, at 311 (4th ed. 1987).

> But when the trustee acts in his own interest in connection with the performance of his duties as trustee, the standard of behavior becomes more rigorous. In such a case his interest must yield to that of the beneficiaries. Where he deals directly with the beneficiary, the transaction may stand, but only if the trustee makes full disclosure and takes no advantage of his position and the transaction is in all respects fair and reasonable. ***When he acts without the consent of the beneficiaries, the transaction will be set aside even though it was otherwise fair and reasonable.***

Id., § 170.25 (emphasis added). The same principle is set out in the Restatement: "The trustee is under a duty to the beneficiary to administer the trust *solely* in the interest of the beneficiary." Restatement, Trusts (Second), § 170(1) (1959) (emphasis added). And, Bogert & Bogert, Trusts & Trustees, § 543, at 217 (Rev. 2d ed. 1993), state, "Perhaps the most fundamental duty of a trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests of third persons."

This Court has recognized the singular duty of loyalty in *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981):

> Under principles of equity, a trustee bears an unwavering duty of complete loyalty to the beneficiary of the trust, to the exclusion of the interests of all other parties. Restatement (Second) of Trusts § 170(1) (1957); 2 A. Scott, Law of Trusts § 170 (1967). To deter

> the trustee from all temptation and to prevent any possible injury to the beneficiary, the rule against a trustee dividing his loyalties must be enforced with "uncompromising rigidity." Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (Cardozo, C.J.). A fiduciary cannot contend "that, although he had conflicting interests, he served his masters equally well or that his primary loyalty was not weakened by the pull of his secondary one." [Citation omitted.]

Id., 453 U.S. at 329-330. The *Amax Coal* formulation of a trustee's duty has been cited with approval by this Court in *Varity Corp. v. Howe*, __ U.S. __, 134 L. Ed. 2d 130, 158 n.6 (1996), and in *Concrete Pipe and Products of California. Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 616 (1993), both ERISA cases.

Firestone cited Comment *d* to § 187 of the Restatement in the dictum that a conflict of interest is a factor to be weighed in determining whether an ERISA fiduciary abused his discretion. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Also on point, though, is Comment *g* to Restatement § 187, which provides,

> The court will control the trustee in the exercise of a power where he acts from an improper even though not a dishonest motive, that is *where he acts from a motive other than to further the purposes of the trust.* Thus, if the trustee in exercising or failing to exercise a power does so because of spite or prejudice or *to further some interest of his own or of a person other than the beneficiary,* the court

> will interpose. Although ordinarily the court will not inquire into the motives of the trustee, yet *if it is shown that his motives were improper or that he could not have acted from a proper motive, the court will interpose.* In the determination of the question whether the trustee in the exercise of a power is acting from an improper motive the fact that the trustee has an interest conflicting with that of the beneficiary is to be considered.

(Emphasis added.) Thus, an improper motive, even without a finding of bad faith, is a basis for the court to undo a trustee's actions. 3 Scott & Fratcher, Trusts, § 187.5, at 46 (4th ed. 1988). *Accord, Colton v. Colton,* 127 U.S. 300, 321 (1888).

GE, in denying benefits from an unfunded plan, was in an unavoidable, inherent conflict of interest under trust principles, and acted with an "improper motive." In addition, to the extent that GE was motivated to deny Petitioners' benefits to maintain union peace, it acted with an "improper motive," to further its own interest and the interests of the union, a party "other than the beneficiary."

Under ERISA, employers are permitted to be plan administrators. *See* 29 U.S.C. § 1108(c)(3). As is common practice, GE is the administrator of its plans in the instant case. That arrangement, which reduces the cost of plan administration, is antithetical to the usual trust, in which a settler designates a separate person to be the trustee. In the traditional arrangement, deference to the trustee who is granted discretion in the Plan is merely effectuating the settlor's wishes. Under ERISA, deference to the company as administrator is a departure from all the principles that prohibit self-dealing by trustees. *See generally* Langbein, The Supreme Court Flunks Trusts, 1990 Sup. Ct. Review 207, 213-216.

The fact that Congress allowed employers to be plan administrators does not require that those conflicted fiduciaries should be judged by the same standard of review as an independent trustee. This Court must require that a conflicted plan administrator is to be reviewed *de novo.* ERISA requires no less. The statute is intended "to protect . . . the interests of participants in employee benefit plans and their beneficiaries, . . . by providing for appropriate remedies, sanctions, and ready access to the Federal courts," 29 U.S.C. § 1001(b), and "to increase the likelihood that participants and their beneficiaries under single-employer benefit pension plans will receive their full benefits." 29 U.S.C. § 1001b(c)(3) (Supp. 1997).

The remedial purposes of ERISA are lost if a reviewing court must give any deference to a conflicted plan administrator. And deference in such a case is a retreat from all the principles that hold a trustee may not divide his loyalties.

In *Firestone,* this Court held that adopting a standard of review for arbitrary and capricious actions in all ERISA cases ". . . would afford less protection to employees and their beneficiaries than they enjoyed before ERISA was enacted," *Firestone Tire & Rubber Co. v. Bruch, supra,* 489 U.S. at 114, a result that would be counter to Congress' intention that ERISA protect plan beneficiaries. This Court need not disturb its holding in *Firestone,* that, unless ERISA plans grant discretion to their administrators to interpret the plans, *de novo* review is required. This Court may not need to disturb its dictum in *Firestone* that, if an administrator is granted discretion, review is for abuse of that discretion. But this Court should enunciate the proper standard of review of a conflicted administrator who has discretion, and hold that *de novo* review is required.

III.

THE QUESTION PRESENTED IS IMPORTANT.

This Court has recognized the importance of ERISA. "ERISA is, we have observed, a 'comprehensive and reticulated statute,' the product of a decade of congressional study of the Nation's private employee benefit system. *Nachman Corp. v. PBGC*, 446 U.S. 359, 361 (1980)." *Mertens v. Hewitt Associates*, 508 U.S. 248, 251 (1993). This Court has also acknowledged ". . . the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force. ERISA is designed to ensure the proper administration of pension and welfare plans, both during the years of the employee's active service and in his or her retirement years." *Boggs v. Boggs*, __ U.S. __, 117 S. Ct. 1754, 138 L. Ed. 2d 45, 54 (1997).

Congress has expressly found that ". . . the continued well-being and security of millions of employees and their dependents are directly affected by . . . plans [that ERISA regulates]," and that those plans are ". . . an important factor affecting the stability of employment and the successful development of industrial relations; . . . . " 29 U.S.C. § 1101(a).

Given, then, the central role that ERISA plans play both in the national economy and in the lives of millions of Americans, a clearly-defined national standard of review is essential both for the smooth functioning of employer-employee relations, and for uniformity of interpretation. ERISA administrators and ERISA beneficiaries need an objective, well-defined standard of review when they are faced with actual or contemplated judicial enforcement of ERISA rights. The dictum in *Firestone* is inadequate to provide a standard.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — MEMORANDUM OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED JUNE 9, 1997

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-1879

WILLIAM H. TOBIN; FRANK J. CANONCIO, III; EDWARD P. DOYLE; LARS O. ERIKSSON; DANTE E. PICCONE; KENNETH R. RICKETTS; LOUIS TREFZ; LAWRENCE J. WILLINGER; GERALD A. WOOLF,

Appellants

v.

GENERAL ELECTRIC CO.; JOHN F. WELCH, JR.; GE PENSION TRUST,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D. C. Civ. No. 95-cv-04003)
District Judge: Honorable Donald W. VanArtsdalen

Submitted Pursuant To Third Circuit LAR 34.1 (a)
May 21, 1997
Before: GREENBERG, ROTH, and WEIS, *Circuit Judges.*

Filed JUN 9 1997

Appendix A

MEMORANDUM OPINION OF THE COURT

WEIS, *Circuit Judge.*

In this ERISA case, plaintiffs appeal the entry of summary judgment in favor of defendants denying additional benefits in the event of a "plant closing." Defendants contended that there had been no "plant closing," and the district court held that the defendants' characterization was not unreasonable. We agree and will affirm.

I.

The nine plaintiffs were formerly employed by defendant General Electric in one of the company's subdivisions located at Malvern, Pennsylvania. Plaintiffs were nonunion, salaried employees in the Static Power Components Operation, which was located in a portion of a building shared with another General Electric subdivision known as "P&C." In 1994, defendant sold the Static Power unit and terminated the plaintiffs' employment. Even though the company continued the P&C operations, plaintiffs contend that the Static Power unit was a separate facility or "plant," and that its sale triggered additional layoff and pension benefits under those respective plans.

Following *Firestone Tire and Rubber Co. v. Bruch,* 489 U.S. 101 (1989), the district court applied a discretionary standard of review to the determination that no plant closing had occurred. Although the benefit plans did not define the term "plant," the court agreed with defendants that the Malvern site was "a single facility housing separate product lines."

The court pointed out that Static Power and P&C occupied the same building, shared a common wall, permitted employees free access to the entire building, and kept all doors unlocked. The two businesses shared common services as well as integrated job listings. Although plaintiffs were not union members, the court noted that one local bargaining unit represented employees of both Static Power and P&C and that defendants did not provide plant closing benefits to its unionized employees. Based on this record, the court concluded that the defendants' characterization of the closing was not unreasonable.

II.

Plaintiffs argue that the district court should have applied a *de novo* standard of review instead of a discretionary standard. They assert that: (1) defendants did not exercise discretion; (2) the defendants' decision to deny benefits was a product of a conflict of interest; (3) the pension board did not grant plaintiffs a full and fair review of their claims; and (4) the closing of Static Power was actually a plant closing.

In *Firestone*, 489 U.S. at 115, the Supreme Court directed that we should exercise *de novo* review over a denial of benefits under ERISA "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." It is undisputed that both the layoff and the pension plans at issue in this case grant defendants discretion to interpret their terms. The district court therefore properly applied a deferential standard of review to the defendants' decision to deny additional benefits. *See, e.g., Hullett v. Towers, Perrin, Forster & Crosby. Inc.*, 38 F.3d 107, 114 (3d Cir. 1994) (arbitrary and capricious is the appropriate standard of review for discretionary decisions to deny benefits).

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Although plaintiffs contend that defendants did not exercise discretion, the district court noted that the defendants' pension board met twice to review the plaintiffs' claims for plant closing benefits. In addition, management employees separately denied layoff benefits. The plaintiffs' citation of *Moench v. Robertson*, 62 F.3d 553, 567-68 (3d Cir. 1995) (no evidence in the record that benefit committee "actually deliberated, discussed or interpreted the plan in any formal manner") is not helpful.

Following *Firestone*, the district court considered the defendants' alleged conflict of interest as a factor, but concluded that it did not fatally infect the defendants' interpretation of the plan. We find no error in this determination. As to the pension board's review of the plaintiffs' claims, we have reviewed the record and are unpersuaded by the plaintiffs' allegations of procedural error.

We are persuaded that the district court did not err in finding that no plant closing had occurred. The district court carefully considered and rejected the plaintiffs' arguments on that score.

Accordingly, the judgment of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing Opinion.

s/ Weis
United States Circuit Judge

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-1879

WILLIAM H. TOBIN; FRANK J. CANONCIO, III; EDWARD P. DOYLE; LARS O. ERIKSSON; DANTE E. PICCONE; KENNETH R. RICKETTS; LOUIS TREFZ; LAWRENCE J. WILLINGER; GERALD A. WOOLF,

Appellants

v.

GENERAL ELECTRIC CO.; JOHN F. WELCH, JR.; GE PENSION TRUST,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Before: GREENBERG, ROTH, and WEIS, *Circuit Judges.*

JUDGMENT

This cause came on to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on May 21, 1997.

On consideration whereof, it is now ordered and adjudged by this Court that the judgment of the District Court entered September 24, 1996 be and the same is hereby affirmed.

Appendix A

Costs taxed against appellants.

ATTEST:
s/ P. Douglas Sisk
Clerk

Date: JUN 9 1997

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FILED SEPTEMBER 24, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

No. 95-4003

WILLIAM H. TOBIN, ET AL.

Plaintiffs

v.

GENERAL ELECTRIC COMPANY, ET AL.

Defendants

MEMORANDUM AND ORDER

VanARTSDALEN, S.J.

Plaintiffs, nine former non-union employees of Defendant General Electric Company ("GE"), allege that the defendants wrongfully denied their claims for "plant closing" benefits pursuant to the GE Pension Plan and the GE Layoff Benefit Plan ("the Plans"). These Plans, which are subject to the provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et. seq. ("ERISA"), offer enhanced retirement and severance benefits to employees laid off by reason of a "plant closing." In Counts I and II of their Amended Complaint,

plaintiffs challenge defendants' denial of plaintiffs' claims for plant closing benefits pursuant to ERISA §502, 29 U.S.C. §1132(a)(1)(B). Count IV further alleges discrimination by GE and its CEO John Welch in violation of ERISA § 510, 29 U.S.C. § 1140.[1] Defendants have moved for summary judgment on each of these claims.

I. Factual Background

This dispute arises from the closing of a GE operation at its Malvern, Pennsylvania facility. As a large, publicly held corporation, GE operates a variety of diverse businesses. GE employed each of the plaintiffs in its Static Power Components Operation ("SPCO"), which manufactured industrial semi-conductors. In 1985, GE transferred the SPCO operation from Collingdale, Pennsylvania to Malvern, where the Production and Control ("P&C") business, which manufactured metering and control systems, was already in operation. SPCO and P&C operated as lines of separate GE businesses.

In 1994, GE sold all the assets of SPCO and closed the operation. As a result of this sale, GE laid off the plaintiffs. The Pension Plan and Layoff Benefit Plan each provide additional benefits to employees laid off pursuant to a "plant closing" that are unavailable to employees laid off for other reasons: the Pension Plan affords expanded opportunities for early retirement and the Layoff Benefit Plan offers increased severance pay. Asserting that the closing of SPCO constituted a plant closing, plaintiffs applied for enhanced benefits pursuant to the Plans. GE, contending in contrast that the shut-down of SPCO was a

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1. By Order dated October 6, 1996, Count III of the Amended Complaint (29 U.S.C. § 1132(c) civil penalty claims for failure of Administrator to supply requested information) was dismissed.

mere "product line exit," denied the claims for plant closing benefits.[2] The parties agree that the plaintiffs' rights to enhanced benefits depend upon whether, within the meaning of the Plans, a "plant closing" occurred.

Both Plans define a "plant closing" as:

> the announcement and carrying out of a plan to terminate and discontinue all Company operations at any plant, service shop or other facility.
>
> Such terms do not refer to the termination and discontinuance of only part of the Company's operations at any plant, service shop or other facility nor to the termination or discontinuance of all of its former operations coupled with the announced intention to commence there either larger or smaller other operations.

Defendants contend that GE maintained one plant in Malvern, at which it operated two businesses. By closing SPCO, defendants argue, GE merely eliminated one product line, causing a "product line exit," not a plant closing. Because GE continued the P&C operation, defendants contend that there was

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2. GE is the administrator of both the Plans. Under the Pension Plan, GE has created a Pension Board to manage the operation and administration of the Plan. This Pension Board reviewed and denied plaintiffs' claims for plant closing pension benefits in October 1994, and again in February 1995. GE management employees, rather than the Pension Board, denied the claims arising under the Layoff Benefit Plan.

no termination of "all Company operations" within the meaning of the Plans.

The Plans do not, however, define "plant, service shop or other facility" for the purposes of determining when a discontinuance of all Company operations at a single "plant, service shop or other facility" has occurred. Plaintiffs contend that SPCO was a separate plant from P&C, and that GE's closing of all SPCO operations caused a termination or discontinuance of all GE operations at that plant. There is no real dispute as to the underlying facts; rather, the parties argue for different interpretations of those facts.

Although SPCO and P&C manufactured different products and reported to different GE businesses,[3] a single building housed both operations. The two operations occupied separate portions of the building: the P&C business in an area referred to as Malvern I, and SPCO in the area known as Malvern II. Furthermore, SPCO and P&C had separate main entrances, and SPCO visitors reported directly to the SPCO entrance. Separate lease terms applied to the different sections of the building.[4] After 1992, in addition, Malvern I and Malvern II had separate mailing addresses,[5] and SPCO employees had a separate alarm

3. SPCO was part of the GE Industrial and Power Systems business, while P&C was part of GE's Electrical Distribution and Control business.

4. The building was enlarged in or about 1985 to accommodate SPCO when it moved from Collingdale to Malvern. At that time, GE and its lessor amended the lease to provide for the additional space. Plaintiff maintains that two different leases applied to Malvern I and Malvern II. Although conceding that different lease terms did apply, defendants argue that a single lease covered the entire facility.

5. From 1985 to 1992, Malvern I and Malvern II did share one mailing address.

system and access cards to unlock external doors.[6] Subsequent to the sale of SPCO, the purchaser, Silicon Power Company, has continued the same manufacturing operations in the space SPCO formerly occupied.[7] These factors emphasize the separation between the SPCO and P&C operations, and bolster plaintiffs' contention that the shut down of SPCO qualifies as a plant closing.

Defendants note, however, that the SPCO and P&C operations shared a common roofline and were separated only by a common wall. GE employees enjoyed unrestricted access to both sections of the building through unlocked doors and a common shipping and receiving dock. Although Silicon Power has continued to use the former SPCO space, those doors have been sealed. One OSHA safety committee assumed responsibility for the entire facility, and the same union represented both SPCO and P&C employees as part of the same collective bargaining unit. Through an integrated job posting system, available positions in both the SPCO and the P&C operations were posted in the different sections of the building, and unionized employees in both operations had bumping rights.[8]

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6. Prior to the consolidation of SPCO operations at their separate mailing address, the record suggests that one alarm system covered the entire facility. While some disagreement may exist as to the alarm system subsequent to that time, for purposes of this motion, I will accept as true plaintiffs' allegations.

7. In fact, defendants assert in their brief that eight of the nine plaintiffs continued to work for Silicon Power after the sale of SPCO. Plaintiffs do not contest that assertion.

8. Plaintiffs emphasize that job qualifications and classifications, which restrict job transferability, sharply limit these bumping rights. Plaintiffs do not dispute, however, that certain rights did exist.

Defendants further emphasize that SPCO and P&C shared services at the Malvern facility. In addition to common computer, telephone, and electrical systems, the operations also shared the services of one on-site nurse and one security guard service. Although plaintiffs do not dispute these facts, they do challenge their relevance. SPCO paid P&C for the services provided, and other, non-GE tenants in the building also utilized the electrical and telephone systems. Plaintiffs therefore argue that such shared services do not support defendants' determination that the two operations were part of a single plant.

II. Discussion

A. Summary Judgment Standard

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson*, 477 U.S. at 248. A court must consider the evidence, and all inferences drawn from it, in the light most favorable to the nonmoving party. *Tigg Corp. v. Dow Corning Corp.*, 822 F.2d 358, 361 (3d Cir. 1987).

B. Claims for Plant Closing Benefits

Plaintiffs have, pursuant to §1132(a)(1)(B), challenged defendants' determination of their benefit eligibility. Section

Appendix B

§1132(a)(1)(B) provides that "[a] civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132 (a)(1)(B). The foregoing discussion indicates that both parties have asserted viable arguments in support of their interpretations of the Plans. Since plaintiffs' entitlement to benefits depends upon whether there was a "plant closing" within the meaning of the Plans, the standard of review applied to the defendants' construction of the term is crucial. Although ERISA does not itself set forth the appropriate standard of review for such actions, the Supreme Court has, in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 99 (1989), addressed the issue.

In that case, The Firestone Tire and Rubber Company ("Firestone") maintained a termination pay plan which provided severance benefits to employees laid off as a result of a "reduction in force." *Id.* at 105-06. Employees terminated subsequent to the sale of Firestone's Plastics Division sought severance pay benefits under the plan. *Id.* Determining that the sale did not constitute a "reduction in work force," Firestone denied those benefits, and the employees filed a class action under §1132(a)(1). *Id.*

Noting that "ERISA abounds with the language and terminology of trust law," the Court applied trust law principles to determine the appropriate standard of review. *Id.* at 110. Generally, a court will defer to a trustee's reasonable interpretation where the trust document specifically grants the trustee the power to construe disputed terms. *See id.* at 111. In the absence of such a grant, however, courts "construe terms in trust agreements without deferring to either party's

interpretation." *Id.* at 112. The Court therefore held that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Id.* at 115.

The implication of the Court's holding is that, where a plan does grant an administrator discretionary authority, a court should apply a deferential standard of review. "Trust principles make a deferential standard of review appropriate when a trustee exercises discretionary powers." *Id.* at 111 (citing Restatement (Second) of Trusts § 187 (1959)). Accordingly, "[a] trustee may be given power to construe disputed or doubtful terms, and in such circumstances the trustee's interpretation will not be disturbed if reasonable." *Id.* (citing G. Bogert & G. Bogert, Law of Trusts and Trustees § 559, at 169-171).

Third Circuit cases subsequent to *Firestone* support the application of a deferential standard of review where a plan grants an administrator discretionary authority. "[T]he arbitrary and capricious standard [applies where] the plan contains provisions which give the administrator discretion in making eligibility determinations." *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990).[9] The terms of the Plans thus

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9. For examples of other cases applying a deferential standard of review to the benefit eligibility decisions of plan administrators, see *Epright v. Environmental Resources Management, Inc.*, 81 F.3d 335, 342-43 (3d Cir. 1996); *Hullett v. Towers, Perrin, Forster & Crosby, Inc.*, 38 F.3d 107, 114 (3d Cir. 1994); *Gillis v. Hoechst Celanese Corp.*, 4 F.3d 1137, 1141 (3d Cir. 1993); *Abnathya v. Hoffman-LaRoche, Inc.*, 2 F.3d 40, 45 (3d Cir. 1993); *Moats v. United Mine Workers of America Health and Retirement Fund*, 981 F.2d 685, 687 (3d Cir. 1992); *Kotrosits v. GATX Corp. Non-Contributory Pension Plan For Salaried Employees*, 970 F.2d 1165, 1172-1173 (3d Cir. 1992); *Nazay v. Miller*, 949 F.2d 1323, 1335 (3d Cir. 1991).

determine the standard of review. The initial question is whether the Plans at issue vested discretionary authority in the administrator.

Because plaintiffs assert benefit claims pursuant to both the Pension Plan and the Layoff Benefit Plan, I will consider the relevant provisions of each Plan. The Pension Plan names GE as the administrator, and provides that "the control and management of the operation and administration of the Plan shall be vested in a Pension Board." The Plan further states that:

> Any determination, decision or action of any Named Fiduciary or other entity having powers, duties, obligations and responsibilities with respect to the Plan concerning or with respect to any question arising out of or in connection with the construction, interpretation, administration and application of the Plan and of its rules and regulations, shall lie within the absolute discretion of such Named Fiduciary or other entity . . . .

The plan specifically includes the Pension Board in the definition of a "Named Fiduciary," and this language unambiguously grants the Pension Board the right to interpret the terms of the Plan. In October 1994 and February 1995, the Pension Board considered plaintiffs' claims for benefits, and concluded that the SPCO shut-down did not constitute a "plant closing" within the meaning of the Plan.

The Layoff Benefit Plan provides that:

> the management and control of the operation

> and administration of the Plan shall be vested in the Company. The Company will solely make all determinations with respect to eligibility and benefits under this Plan and such determinations will be final and binding. Accordingly, the administration of any claims arising under the Plan, including the discretionary authority to interpret terms, review, pay or deny any claims and the provisions of a full and fair review of claims shall be vested exclusively in the Company. For purposes of the Act, the Company shall be the Administrator of the Plan.

Under this Plan, the term "Company" refers to "General Electric Company and its affiliates." This provision, like its counterpart in the Pension Plan, unambiguously vests in GE absolute discretionary authority to interpret the Plan. In the instant case, the Company denied plaintiffs' claims for plant closing benefits under the Layoff Benefit Plan. Human Resources Manager P.W. Jarrosiak notified Plaintiff Tobin that, because the SPCO closing did not meet the Plan definition of a plant closing, Tobin would be ineligible for plant closing benefits.[10]

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10. On these facts, the recent Third Circuit opinion in *Moench v. Robertson*, 62 F.3d 553 (3d Cir. 1995), is not controlling. In *Moench*, former employees alleged that their Employee Stock Option Committee's continued and exclusive investment in deteriorating employer stock constituted a breach of fiduciary duty. The Committee claimed that the plan mandated that it invest solely in employer stock. Although the plan did grant the Committee discretionary authority, the court declined to apply *Firestone's* arbitrary and capricious standard because it found no evidence that the Committee "actually deliberated, discussed or interpreted the plan in any formal manner." *Id.* at 567. In the instant case, however, the Pension Board and GE formally denied plaintiffs' claims, stating in writing that the decision was grounded in their

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Despite this grant of broad discretionary authority to interpret the Plans and determine benefit eligibility, plaintiffs argue that the defendants' conflict of interests renders the deferential standard inapplicable. Although GE's dual role as sponsor and administrator of the Plans does inevitably create some conflict, I do not find that the conflict in this case mandates a heightened standard of scrutiny. The Court in *Firestone* stated that where "a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'facto[r] in determining whether there is an abuse of discretion.' " 489 U.S. at 115 (citing Restatement (Second) of Trusts § 187, comment d (1959)). As I read this language, the Court does not require a different standard of review in conflict situations, but merely indicates that any potential conflict is a factor to consider in an evaluation under the deferential standard.

Although such a deferential standard has been criticized as too unprotective of employee interests, I find nothing in *Firestone* to suggest that, where a Plan grants an administrator discretionary authority, any other factor — such as whether the plan is funded or unfunded or whether a conflict exists — can mandate a heightened standard of scrutiny. The court in *Abnathya v. Hoffman-LaRoche Inc.* seems to recognize that *Firestone* is controlling on this issue when it states: "[p]erhaps the Supreme Court will have an opportunity to reconsider this issue. Or perhaps Congress will consider amending ERISA to require more stringent review where an employer acts as its own plan administrator." 2 F.3d 40, 46 fn. 5 (3d Cir. 1993). Until that

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(Cont'd)
construction of the term "plant closing" in the Plans. *Moench's* additional suggestion that some cases outside the purview of §1132(a)(1)(B) may merit de novo review is also inapplicable on the facts here. *Id.* at 565. These plaintiffs assert only a claim for benefits pursuant to §1132.

time, I understand *Firestone* to require a deferential standard of review.

Accordingly, I will apply a deferential standard of review to the defendants' decision to deny plaintiffs' claims for plant closing benefits. In *Firestone,* the Court seems to refer to a reasonableness standard: "[a] trustee may be given power to construe disputed or doubtful terms, and in such circumstances the trustee's interpretation will not be disturbed if reasonable." 489 U.S. at 111. Subsequently, the Third Circuit has referred to an arbitrary and capricious standard of review, under which "a district court may overturn a decision of the Plan administrator only if it is 'without reason, unsupported by substantial evidence or erroneous as a matter of law." *Abnathya,* 2 F.3d at 45 (quoting *Adamo v. Anchor Hocking Corp.,* 720 F. Supp. 491, 500 (W.D. Pa. 1989)). Regardless of the specific term used to describe the standard of review, I find that the defendants' decision can be considered neither unreasonable nor arbitrary and capricious.

In *Moench v. Robertson,* the court cited a series of factors to consider in evaluating the reasonableness of an administrator's decision:

> (1) whether the interpretation is consistent with the goals of the Plan; (2) whether it renders any language in the Plan meaningless or inconsistent; (3) whether it conflicts with the substantive or procedural requirements of the ERISA statute; (4) whether the [relevant entities have] interpreted the provision at issue consistently; and (5) whether the interpretation is contrary to the clear language of the Plan.

62 F.3d 553, 566 (quoting *Cooper Tire & Rubber Co. v. St. Paul Fire & Marine Ins. Co.*, 48 F.3d 365, 371 (8th Cir. 1995) (citations omitted)). These considerations indicate that the defendants' denial of plant closing benefits withstands judicial scrutiny. GE provides additional benefits to employees laid off pursuant to a plant closing at least in part to cushion the severe impact of the company's complete departure from a community. Because GE continued the P&C operations in Malvern, the defendants' interpretation of the Plans is consistent with the general rationale underlying enhanced plant closing benefits.

Plaintiffs argue that by failing to distinguish between a plant, service shop, or other facility, the defendants' interpretation renders the Plan language meaningless and inconsistent.[11] At most, however, defendants' construction renders the language redundant. The drafters of legal documents commonly include redundant or unnecessary terms to guard against potential loopholes. Plaintiffs do concede that defendants' interpretation does not conflict with any provision of ERISA.[12]

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11. Some possible differences among the terms "plant, service shop and other facility" could exist consistent with defendants' interpretation of the Plans. For instance, a "plant" often connotes a manufacturing operation, a "service shop" may refer to an equipment repair business, and an "other facility" could describe a laboratory testing site.

12. Plaintiffs have, however, claimed that the Pension Board violated their procedural rights to a full and fair review, as guaranteed by ERISA § 503. 29 U.S.C. § 1133. In support of their position, plaintiffs cite *Grossmuller v. International Union*, 715 F.2d 853 (3d Cir. 1983). In that case, the defendants terminated the plaintiff's disability benefits on the basis of a private investigator's report that the plaintiff was otherwise gainfully employed. *Id.* at 855. The court found that the defendants deprived the plaintiff of a full and fair review by failing to inform him of the evidence upon which

(Cont'd)

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Plaintiffs further contend that the defendants' interpretation of a "plant closing" has been inconsistent. They note that GE awarded plant closing benefits to employees laid off pursuant to the closing of an appliance plant in Milwaukee, even though GE continued other operations at the same site. I am satisfied, however, that undisputed factual differences between the Malvern and Milwaukee operations could reasonably justify the differing treatment. For instance, the Milwaukee operations were housed in different buildings, separated by a barbed wire fence, and were connected only by a tunnel kept locked at all times. The SPCO and P&C operations, in contrast, shared a single building. A common wall separated the two businesses, but employees of both operations had free access to the entire building through doors kept unlocked at all times.

Furthermore, GE did not provide plant closing benefits to unionized SPCO employees. Although this decision, and the union's failure to challenge it, are largely irrelevant to whether a plant closing in fact occurred, it does indicate that the

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they relied, by refusing to interview the plaintiff himself, and by violating past practices by allowing a third party, but not the plaintiff, to appear. *Id.* at 858.

Grossmuller, however, is inapplicable on the instant facts. In contrast to *Grossmuller,* the Pension Board's decision here did not depend upon any factual determinations specific to these plaintiffs and their claims. Furthermore, the Pension Board provided plaintiffs with a written explanation of its decision to deny plant closing benefits, citing both Plan language and other factors in support of its position. *See* Plaintiffs' Amended Complaint, Exhibit C (letter from J.J. O'Brien, Secretary of the GE Pension Board, to plaintiffs' counsel). Plaintiffs' assertions that Frank Doyle influenced other Board members and that the Board members discussed the SPCO closing with other GE employees do not evidence the sort of unfairness deemed by *Grossmuller* to violate § 503.

defendants applied a consistent interpretation of the term "plant closing" to all aspects of the SPCO closing.

Finally, defendants' interpretation does not contradict the clear language of the Plans. In fact, plaintiffs' counsel admitted at oral argument that the Plan definition of a plant closing is ambiguous.[13] The Plans refer to a discontinuance of "all Company operations at any plant, service shop or other facility," but never define the terms plant, service shop, or facility. To clarify ambiguous terms, plan administrators may refer to extrinsic evidence, and the defendants here relied on both the Plan language and other evidence in reaching their decision. *See Epright v. Environmental Resources Management, Inc. Health and Welfare Plan,* 81 F.3d 335, 339 (3d Cir. 1996).

The Plan definition of plant closing specifically states that the term "do[es] not refer to the termination and discontinuance of only part of the Company's operations at any plant, service shop or other facility . . . ." Because GE continued the P&C operation at the Malvern site, such language supports defendants' determination that the SPCO closing was a mere product line exit. Despite the ambiguity in the language, the most natural reading of this provision suggests that GE did not intend plant closing benefits to apply when it continued substantial manufacturing activities at the same location and in the same building.

Furthermore, the record provides evidentiary support for

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13. Plaintiffs' counsel provided no clear definition of the terms, and suggested neither how a court should define the terms, nor what standards should be applied to determine whether a "plant closing" occurred. Plaintiffs' counsel suggested at oral argument that, as to Counts I and II, summary judgment should be granted in favor of plaintiffs.

the defendants' characterization of the Malvern operation as a single facility housing separate product lines. One local bargaining unit represented the unionized employees of both businesses, and the operations shared certain common services, as well as an integrated job posting system. Although plaintiffs point to other facts which could conceivably justify a different conclusion, defendants' determination that the SPCO shutdown did not constitute a plant closing cannot be said to be unreasonable or arbitrary and capricious. Even considering the defendants' conflict of interests, I cannot conclude that their decision was unreasonable. Because defendants' position finds support in both the Plan language and the undisputed facts, it is not " 'without reason, unsupported by substantial evidence or erroneous as a matter of law.' " *Abnathya,* 2 F.3d at 45 (quoting *Adamo v. Anchor Hocking Corp.,* 720 F. Supp. 491, 500 (W.D. Pa. 1989).[14] Defendants, therefore, are entitled to summary judgment on plaintiffs' claims for benefits pursuant to § 1132(a)(1)(B).

C. ERISA § 510 Claims

Plaintiffs further allege that Defendant GE and its CEO John Welch violated § 510 of ERISA by characterizing the SPCO closing as a product line exit rather than a plant closing. Section 510 provides that:

> [i]t shall be unlawful for any person to

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14. Accepting plaintiffs' suggestion at oral argument that Counts I and II are appropriate for summary judgment, I would find on the present record that, even under a de novo standard of review, the SPCO closing did not constitute a "plant closing" within the meaning of the Plans. Rather, GE eliminated one product manufactured at the site, while continuing other manufacturing operations.

> discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan . . . .

29 U.S.C. § 1140. To establish a prima facie case, plaintiffs must prove: "(1) prohibited employer conduct (2) taken for the purpose of interfering (3) with the attainment of any right to which the employee may become entitled." *Gavlick v. Continental Can Co.*, 812 F.2d 834, 852 (3d Cir.), *cert. denied*, 484 U.S. 979 (1987).

Plaintiffs here concede that, if the SPCO closing does not constitute a plant closing within the meaning of the Plans, the § 510 claim must fail. As the forgoing discussion illustrates, plaintiffs cannot show that in denying the claims for plant closing benefits, the defendants wrongfully deemed the shutdown a product line exit. In the absence of such wrongful or prohibited conduct, defendants are entitled to summary judgment on plaintiffs' claims arising under ERISA § 510.

III. Conclusion

For the foregoing reasons, defendants' motion for summary judgment will be granted and judgment will be entered in favor of defendants on all claims remaining in plaintiffs' Amended Complaint.

An appropriate order follows.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

No. 95-4003

WILLIAM H. TOBIN, ET AL.

Plaintiffs

v.

GENERAL ELECTRIC COMPANY, ET AL.

Defendants

ORDER

For the reasons discussed in the accompanying memorandum, it is hereby ORDERED that Defendants' motion for summary judgment (filed document number 26) is GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of Defendants General Electric Company, John F. Welch, Jr., and GE Pension Trust, and against Plaintiffs William H. Tobin, Frank J. Canonico, III, Edward P. Doyle, Lars O. Eriksson, Dante E. Piccone, Kenneth R. Ricketts, Louis Trefz, Lawrence J. Willinger, and Gerald A. Woolf, on all claims.

BY THE COURT
s/ Donald W. VanArtsdalen
Donald W. VanArtsdalen, S.J.

September 24, 1996

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING PETITION FOR REHEARING DATED JULY 7, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-1879

WILLIAM H. TOBIN; FRANK J. CANONCIO, III; EDWARD P. DOYLE; LARS O. ERIKSSON; DANTE E. PICCONE; KENNETH R. RICKETTS; LOUIS TREFZ; LAWRENCE J. WILLINGER; GERALD A. WOOLF,

Appellants

v.

GENERAL ELECTRIC CO.; JOHN F. WELCH, JR.; GE PENSION TRUST

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 95-4003)

SUR PETITION FOR REHEARING

BEFORE: BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE, and WEIS, *Circuit Judges*

The petition for rehearing filed by the appellants, William H. Tobin, Frank J. Canoncio, III, Edward P. Doyle, Lars O. Eriksson, Dante E. Piccone, Kenneth R. Ricketts, Louis Trefz, Lawrence J. Willinger, and Gerald A. Woolf, in the above

captioned matter having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

BY THE COURT:
s/ illegible
Circuit Judge

DATED: JUL 7 1997

ly/cc: EBP
TDH
MLB